Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1997

SEACOR MARINE, INC.

Petitioner,

v.

CHEVRON USA, INC.

Respondent.

Petition for Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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34 pp

QUESTION PRESENTED

The U. S. Fifth Circuit Court of Appeals held below that an agreement requiring one party to indemnify another for liability "arising out of" the unloading of cargo from a vessel encompassed strict liability for the faulty design, construction and maintenance of a crane on an adjacent offshore drilling platform. The question presented here is:

Does an agreement to indemnify another for liability "arising out of" a specified activity apply even where the negligence or fault giving rise to the liability did not occur in the conduct of that activity?

LIST OF ALL PARTIES

The undersigned counsel of record for SEACOR Marine, inc. and Anglo-American Insurance Company, Ltd. Certified that the following persons have an interest in this case. These representations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal:

SEACOR Marine, Inc., Defendant-appellee;

Anglo-American Insurance Company, Ltd., Third-Party Defendant-Appellee;

Chevron USA, Inc., Defendant/Third-Party Plaintiff/Appellant;

Nabors Drilling USA, Inc., Intervenor.

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PETITION FOR WRIT OF CERTIORARI

SEACOR Marine, Inc. ("SEACOR") respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on February 25, 1997, in order to resolve recurring confusion in the interpretation of contractual indemnity clauses as to when liability may be said to have "arisen out of" activities specified in the clause.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit that gives rise to this petition is published at 106 F.3d 1232.

JURISDICTION

On February 25, 1997, the United States Fifth Circuit Court of Appeals issued its judgment and opinion reversing the judgment of the district court and holding that SEACOR Marine, Inc. owes contractual indemnity to Chevron USA, Inc. Pursuant to Supreme Court Rule 13.1, this petition has been filed within ninety days of the entry of judgment.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED IN THIS CASE

None.

STATEMENT OF THE CASE

This matter involves the claim of Chevron USA, Inc. ("Chevron") for contractual indemnity under a vessel charter agreement with SEACOR Marine, Inc. ("SEACOR") pursuant to which Chevron chartered SEACOR's supply vessel LONG ISLAND for use in oil and gas drilling activities in the Gulf of Mexico. Underlying this indemnity claim was a serious injury sustained to Raymond Gaspard.

Gaspard was injured when the fastline of a crane on a Chevron platform parted, allowing the "headache ball" to fall and strike him in the legs. At the time of the accident, Gaspard was helping to offload drill pipe from the LONG ISLAND, which was tied up to the platform.

In the ensuing litigation, Gaspard alleged that Chevron should be held liable for his accident because:

> [Chevron's] Platform B, including the workover rig and the Unit Mariner Crane 10,000, constituted a "building" or other immovable under circumstances in which the fall of the headache ball and the failure of the [crane's] anti-two-blocking device and other facts of the accident constitute a "ruin" caused by vices in its construction, and improper design, and/or a failure to repair it, all within the meaning of La. Code Civ. Art. 2322 so as to make defendant, Chevron, responsible for the loss and damage caused to Petitioners.

In other words, Gaspard alleged that Chevron was strictly liable under Louisiana law because its drilling platform and the

appurtenant crane were in a state of ruin due to defective design, improper construction and inadequate repair. By supplemental complaint, plaintiff later made the related allegation that Chevron was liable for failing to inspect the crane on its platform. No other claims against Chevron were alleged.

Seeking indemnity for its potential liability to plaintiff, Chevron filed a cross-claim against SEACOR. The cross-claim alleged that SEACOR owed Chevron indemnification under the Chevron-SEACOR Blanket Time Charter Agreement for the charter of the LONG ISLAND. The indemnity clause in the blanket Time Charter Agreement provided that SEACOR owed Chevron indemnity for liability arising from various vessel-related activities as follows:

> [SEACOR] hereby agrees to fully indemnify . . . [Chevron] . . . of and from any and all liabilities, losses, damages, and costs for personal injury and death . . . arising out of or in any way directly or indirectly connected with the performance of service under this agreement or the ownership, maintenance, management, operation, transportation of passengers, carrying of cargo, loading or unloading of cargo, loading or unloading of passengers or navigation of the vessel . . .

Chevron moved for a summary judgment that it was entitled to indemnity from SEACOR under this clause. Finding no material facts in dispute, the district court ruled as a matter of law that SEACOR did not owe indemnification to Chevron. Relying on *Lanasse v. Travelers Ins. Co.*, 450 F.2d 580 (5th Cir. 1971) and its progeny, the district court held:

> Chevron's strict liability arising from the operation of the crane is not

> connected to the operation of the M/V LONG ISLAND or SEACOR's performance under the charter agreement . . .. Indemnity for liability "arising out of or in any way directly or indirectly connected with the performance" of the agreement is as broad as possible. Yet, Fifth Circuit precedent specifically holds that such language does not cover injury caused by a platform crane during cargo operations aboard the chartered vessel.

After judgment was entered in favor of SEACOR, Chevron remained in the lawsuit and ultimately paid plaintiff $100,000 in settlement. Seeking indemnity for that settlement payment, Chevron appealed the lower court's summary judgment ruling in favor of SEACOR to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit reversed, holding that Chevron's potential strict liability for the faulty design, construction and maintenance of the platform crane fell within the scope of the indemnity clause's coverage for liability "arising out of" the "unloading of cargo" from the vessel.

Jurisdiction existed in the federal court of first instance pursuant to the court's admiralty and maritime jurisdiction and 28 U.S.C. §1333.

REASONS FOR GRANTING WRIT

The Fifth Circuit's opinion exemplifies recurring confusion among the courts, which have failed to consistently recognize that liability "arises out of" an activity only if the acts or omissions giving rise to the liability occurred in the conduct of that activity. Review by this Court would clarify the meaning of this common term of indemnity contracts and would lend predictability to the

interpretation of innumerable service contracts in marine industries and elsewhere.

Chevron seeks contractual indemnity from SEACOR under a clause in the Blanket Time Charter Agreement executed between the parties. This clause expressly limited the obligation to indemnify to liability arising from vessel-related activities:

> [SEACOR] hereby agrees to fully indemnify . . . [Chevron] . . . of and from any and all liabilities, losses, damages, and costs . . . for personal injury and death . . . arising out of or in any way directly or indirectly connected with the performance of service under this agreement or the ownership, maintenance, management, operation, transportation of passengers, carrying of cargo, loading or unloading of cargo, loading or unloading of passengers or navigation of the vessel . . ..

This clause, which was drafted by Chevron, has two components. The first states broadly that indemnity is owed for liability arising out of "performance of service under this agreement." The second more particularly states that indemnity is owed for liability arising out of nine discrete aspects of controlling and operating the vessel ("ownership, maintenance, management, operation, transportation of passengers, carrying of cargo, loading or unloading of cargo, loading or unloading of passengers or navigation of the vessel"). What is common to the broad first component and to the enumerated items of the second is that all concern vessel-related operations. Because the clause covers only liabilities that "arise out of" these activities, the clause covers only vessel-related liabilities.

Yet this is not how the Fifth Circuit interpreted the clause. Reflecting recurrent confusion as to when liability may be said to "arise out of" a specific activity, the court ignored the causal element of this phrase and held that indemnity is owed for strict liability due to the faulty design, construction and maintenance of a platform crane because the acts and omissions giving rise to this liability (however remote in time and place and however unrelated to the

chartered vessel) resulted in harm (however coincidentally) during the "unloading of cargo" from the chartered vessel. The error in this holding was that it ignored the causal relationship requirement inherent in the phrase "arising out of." This causal component requires that the acts or omissions giving rise to the liability must have occurred in the conduct of the activities specified in the indemnity clause before the resulting liability fairly can be said to have "arisen out of" those activities.

Without the reasonable limitation imposed by such a causal relationship requirement, there is no principled way of determining whether a given liability is sufficiently related to the activities specified in an indemnity clause to be said to have "arisen out of" those activities. Without this limitation, the line between liabilities that are covered under the indemnity clause and those which are not covered is drawn according to the fortuity of whether the chartered vessel happens to be conducting operations in the vicinity of the accident at the time and place it occurs.

The court below relied on just such a fortuity in determining that SEACOR owned indemnity. In an attempt to explain why liability for the platform crane's design, construction and maintenance deficiencies "arose out of" the unloading of the chartered vessel, the Fifth Circuit wrote:

> The indemnification agreement applies only to activities that have some relation to the LONG ISLAND. . . . Of course, we agree that the contract does not burden SEACOR with liability for defects in the platform crane generally. . . . [But] [e]ven if the platform crane malfunctioned because of long-term inattention to maintenance, the injury "arose out of" or was "directly or indirectly connected with" Chevron's use of the crane during unloading. . . . The fact that the crane could just as easily have caused an injury on the platform

> after the time charter agreement expired does not take this particular injury outside of the indemnification provision. *Gaspard v. Offshore Crane and Equipment, Inc.*, 106 F.3d 1232, 1233 (5th Cir. 1997).

As this passage from the Fifth Circuit's opinion reveals, indemnification was found to be owed even though the acts and omissions (i.e., the improper design, construction and maintenance of the crane) that caused the accident and gave rise to the liability were unrelated to the activity of unloading cargo from the chartered vessel. Thus, SEACOR was found to owe indemnity here not because of the manner in which any vessel-related operations were conducted but rather because of the sheer fortuitous presence of the chartered vessel at the time and place at which the faulty design, construction and maintenance of the platform crane finally caused the crane's line to snap, causing Mr. Gaspard's injury.

SEACOR respectfully submits that simply because the chartered vessel was fortuitously present on the scene unloading cargo at the time of the accident does not mean that liability for the accident "arose out of" the vessel's activity in this regard. The phrase "arising out of" connotes more. It connotes that the acts and omissions giving rise to the liability must have occurred in the course of the activities associated with unloading the cargo from the vessel.

The appellate courts in several other cases have recognized this important distinction. In *Smith v. Tenneco*, 803 F.2d 1386 (5th Cir. 1986), the plaintiff, an employee of a contractor for Tenneco, was injured due to the negligence of a crane operator while being lowered in a personnel basked from Tenneco's platform onto the deck of a supply vessel. Similar to this case, the time charter agreement between the vessel owner and Tenneco provided that the vessel owner owed Tenneco indemnity and a defense with respect to liability "which . . . arises out of or incident to the performance hereunder [of the charter agreement]." *Id.* At p. 1388, n.1. As here, the platform owner, Tenneco, sought indemnity and a defense from the vessel owner pursuant to this clause. In

rejecting the indemnity claim, the appellate court in *Smith* reiterated the rule that "[i]ndemnity agreements are to be strictly construed." *Id.* at 1388; *Marathan Pipeline v. Drilling Rig ROWAN/ODESSA*, 527 F.Supp. 824, 835 (E.D. La. 1981), *affirmed*, 699 F.2d 240 (5th Cir.) *Cert denied*, 464 U.S. 820, 104 S.Ct. 82 (1983). The court went on to note that:

> In two prior cases involving very similar facts, panels of this Court have held that *indemnity provisions in charter parties do not apply to the negligent operation of a crane on the charterer's drilling platform.*

Id. At 1388. In light of this authority, the appeals court followed suit and held: "By precisely the same logic, we must hold that [the plaintiff's] unfortunate collision with the deck [of the support vessel] did not cause his injury to arise out of or to be incident to the performance of the charter agreement." Accordingly, the *Smith* court held that the indemnity clause did *not* apply.

Likewise, in *Lanasse v. Travelers Ins. Co.*, 450 F.2d 580 (5th Cir. 1971), a drilling platform owner sought indemnity from a support vessel owner pursuant to an indemnity clause in a time charter agreement that applied to claims "directly or indirectly connected with the possession, management, navigation, and operation" of the vessel. *Id.* At 583. The accident at issue in *Lanasse* was indistinguishable in nature from the accident at issue here, having occurred when a crane operator on a drilling platform allowed a load to swing into a worker on the vessel's deck. The U. S. Court of Appeals for the Fifth Circuit found the indemnity clause inapplicable and wrote:

> As broad as these terms are to comprehend injuries caused by the operation of the vessel in a practical sense, they do not comprehend an occurrence in which the vessel's sole contribution is to be there as the

> carrier from which the cargo is being removed.

Id. At 583.

In *Hobbs v. Teledyne Movable Offshore, Inc.*, 632 F.2d 1238 (5th Cir. 1980), the appellate court found a similar indemnity provision to be inapplicable to liability arising from an injury that occurred while the plaintiff was being transferred by a crane from the drilling platform to a crew boat. Once again, this holding was compelled by the fact that: "The operation of the crane was not even remotely related to the operation of the vessel." *Id.* at 1241.

This case falls squarely within the rule set forth in *Smith, Lanasse* and *Hobbs*. These three holdings establish that: "*indemnity provisions in charter parties do not apply to the negligent operation of a crane on the charterer's drilling platform.*" *Smith*, 803 F.2d at 1388. In the instant case, the accident was caused by the parting of a cable on the drilling rig's crane whose "headache" ball then fell and struck Mr. Gaspard. The accident did not arise out of performance of the charter agreement or, for that matter, out of the unloading of cargo from the vessel. The indemnity clause therefore does not apply.

The allegations of Gaspard's Complaint confirm that the potential liability of Chevron for which indemnity is sought had nothing to do with performance of the obligations of the time charter or with the unloading of the supply vessel. The Complaint at Paragraph 12 states the alleged basis for Chevron's liability:

> Platform B, including the workover rig and the Unit Mariner Crane 10,000, constituted a "building" or other immovable under circumstances in which the fall of the headache ball and the failure of the anti-two-blocking device and other facts of the accident constitute a "ruin" caused by vices in its construction, and improper design, and/or failure to repair it, all

> within the meaning of La. Civ. Code Art. 2322, so as to make Defendant, Chevron, responsible for the loss and damage caused to Petitioners.

Thus, the claim against Chevron was that it was strictly liable for the "ruin" of the platform and the appurtenant crane due to deficiencies in their construction, design and maintenance. This liability is based on Article 2322 of the Louisiana Civil Code, which is entitled "Damage caused by ruin of building" and provides:

> The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice in its original construction.

Chevron's alleged liability therefore arises under state law in its capacity as platform owner for the "ruin" of the platform. Such liability does not arise out of or in connection with the performance of the time charter agreement or the unloading of the supply vessel. Accord *Hyde v. Chevron USA, Inc.*, 697 F.2d 614, 630 (5th Cir. 1983) (holding that, "As a matter of law, Chevron is strictly liable by reason of its ownership of the injury-producing thing [a drilling platform], a matter having nothing to do with the alleged negligent acts of Chevron or its contractor").

In our case, the Fifth Circuit's opinion below lost sight of the "causal operational relationship" requirement set forth in its previous decision and allowed the vessel's mere fortuitous engagement in a cargo offloading operation at the locale of the accident to trigger an obligation to indemnify. Chevron's potential liability for Mr. Gaspard's injuries was not caused by the activities inherent in the operation of unloading cargo from the vessel. Rather, it was caused by the alleged deficiencies in the design, construction and maintenance of the platform crane. These matters have nothing to do with the unloading of cargo from the LONG ISLAND. As in *Lanasse*, 450 F.2d at 583, "the vessel's sole contribution [was] to be there as the carrier from which the cargo [was] being removed [at the time of the accident]." This is an insufficient basis for imposing

liability under the indemnity clause. The Fifth Circuit's opinion below accordingly was in error.

Indemnity clauses similar to the one in the Chevron-SEACOR Blanket Time Charter are found in a vast array of service contracts in the marine industries and elsewhere. Virtually all of such clauses contain language indistinguishable from the "arising out of" language found here. How broadly to interpret this language and how to draw lines in a principled way between liabilities that are and are not covered under these clauses is a source of widespread confusion among the contracting parties and is a source of never-ending litigation in the courts. The Supreme Court's guidance is needed on this important issue.

CONCLUSION

For the foregoing reasons, petitioner SEACOR Marine, Inc. respectfully prays that this application be granted and that a writ of certiorari be issued in this case.

Respectfully submitted,

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App. 1

APPENDIX A

RAYMOND GASPARD ET AL., Appellant
v.
OFFSHORE CRANE AND EQUIPMENT ET AL., Appellees

No. 94-0261

United States District Court
Eastern District of Louisiana

March 31, 1995. ORDER AND REASONS

Defendant Chevron U.S.A. Inc. ("Chevron") has moved for partial summary judgment on its crossclaim against Seacor Marine, inc. ("Seacor"). For the reasons set forth below, the motion is DENIED.

BACKGROUND

This litigation arises from a serious injury suffered by Raymond Gaspard. Gaspard was working as a roughneck for Nabors Drilling U.S.A., Inc, ("Nabors"). Chevron had hired Nabors to perform workover services on a Chevron platform in the Gulf of Mexico. Chevron had also entered into a Blanket Time Charter with Seacor under which Seacor's vessel, the M/V LONG ISLAND, was used to transport cargo to the platform. The M/V LONG ISLAND was tied to the platform when Gaspard and others were sent down to the vessel to assist in the offloading of drill collars. The workers were to rig a sling from Nabors' crane located on the platform to the drill collars. For reasons that have yet to be determined, the fast line of the crane was activated, pulling the line and the headache ball up to the crane's sheave, causing the line to break. The line and headache ball fell on Gaspard, amputating both of his legs.

In addition to suing the manufacturers and inspectors of the crane, Gaspard has brought suit against Chevron and Seacor. Only Gaspard's allegations against Chevron are relevant to this motion.

Gaspard claims that Chevron is strictly liable under Louisiana law for the "ruin" of its immovable, stating:

> Platform B, including the workover rig and the Unit Mariner Crane 10,000, constituted a "building" or other immovable under circumstances in which the fall of the headache ball and . . . other facts of the accident constitute a "ruin" cause by vices in its construction, an improper design, and/or failure to repair it, all within the meaning of La. Civ. Code Art. 2322, so as to make defendant, Chevron, responsible for the loss and damage caused to petitioners.

Plaintiff's Amended Petition, ¶ 13.

Chevron filed a crossclaim against Seacor and now moves for partial summary judgment on Seacor's duty to indemnify. The charter agreement between the parties states that regardless of Chevron's fault, Seacor will indemnify Chevron for any liability:

> arising out of or in anyway directly or indirectly connected with the performance of service under this agreement or the ownership, maintenance, management, operation, transportation of passengers, carrying of cargo, loading or unloading of cargo, loading or unloading of passengers or navigation of the vessel . . ..

Chevron claims that Seacor must indemnify it for any sums it may eventually pay Gaspard.

DISCUSSION

Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." FRCP 56(c). The facts are not in dispute with regard to this motion. Instead, the court must interpret the charter agreement's indemnity clause.

The starting point for the court's analysis is the Fifth Circuit's decision in *Lanasse v. Travelers Ins. Co.*, 450 F.2d 580 (5th Cir. 1971). The facts in *Lanasse* are nearly indistinguishable from this case. Lanasse was a crew member on a vessel under time charter to Chevron. Lanasse was offloading cargo from the vessel onto a Chevron platform, when he was injured as a result of the operation of a crane mounted on the platform. Chevron sought indemnification from the vessel owner pursuant to a clause in the charter agreement covering liability "arising in any way directly or indirectly connected with the possession, navigation, management, and operation of the vessel." *Id.* At 582 n.4 (emphasis omitted).

The court ruled against Chevron because the proximate cause of Lanasse's injury, the operation of the crane, was completely unrelated to the operation of the vessel. Despite the broad language of the indemnity provision, the court concluded that it "do[es] not comprehend an occurrence in which the vessel's sole contribution is to be there as the carrier from which the cargo is being removed." *Id.* At 583.[1]

The Fifth Circuit applied *Lanasse* to a relatively similar factual scenario in *Smith v. Tenneco Oil Co., Inc.*, 803 F.2d 1386 (5th Cir. 1986). Smith was injured while being lowered in a personnel basket from a Tenneco platform to the deck of a vessel time chartered by Tenneco. A jury determined that the negligence

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[1] This court is not in any way making a finding of fault on the part of either Chevron or Seacor. Rather, for the purposes of this motion, the court assumes the truth of the plaintiff's allegations against Chevron in order to determine what, if any, indemnity Seacor owes.

of the crane operator was the sole cause of the accident. Tenneco sought recovery from the boat's owner pursuant to the indemnity clause in their charter agreement. The clause required the boat owner to indemnify Tenneco for any liability, regardless of Tenneco's fault, which "arises out of or is incident to performance" of the charter agreement. *Id.* At 1399. M/1/

The court began its analysis by noting that indemnity agreements are subject to strict construction. It then cited *Lanasse* for the proposition that "indemnity provisions in charter parties do not apply to the negligent operation of a crane on the charterer's drilling platform." *Id.* at 1388. Finding no significant distinction with the facts in *Lanasse*, the court proceeded to analyze differences in the contractual language. The district court had found Tenneco's "aris[ing] out of or incident to performance' language to be broader than Chevron's "directly or indirectly connected with the operation of the vessel" language in *Lanasse*. The Fifth Circuit rejected this conclusion, terming it "a distinction without a substantial difference." Although the Tenneco indemnity clause may cover activities other than the operation of the vessel, "it does not involve those aspects of operation of the crane on the drilling platform which are independent of the operation of the [vessel]." Because the plaintiff's injury was not directly or indirectly connected to the vessel's operations, the injury was not incident to the performance of the charter agreement. *Id.* at 1388-89.

Applying *Lanasse* and *Smith*, Gaspard's allegations against Chevron do not fall within the first part of the indemnity clause, which covers liability "arising out of or in anyway directly or indirectly connected with the performance of service under this agreement." Chevron's strict liability arising from the operation of the crane is not connected to the operation of the M/V LONG ISLAND or Seacor's performance under the charter agreement.

Chevron argues that the second part of the indemnity clause, which specifically refers to the loading or unloading of cargo, distinguishes *Lanasse* and *Smith*. Chevron relies on the district court's holding in *clement v. Marathon Oil Co.*, 724 F.Supp. 431 (E.D.La. 1989). The plaintiff in *Clement*, a deck-hand on a vessel time chartered to Marathon, was injured when he was hit by

a personnel basket being lowered to the deck of his vessel from a Marathon platform. Marathon sought recovery from the boat owner based on an indemnity clause that covered liability "in any way directly or indirectly connected with the . . . operation of the vessel, or the related activities of MARATHON in the vicinity thereof, including, but not limited to loading or unloading." *Id.* At 433. The court found for Marathon, distinguishing *Lanasse* and *Smith* because "[t]he indemnity language in this case specifically refers to 'loading and unloading,' and the phrase 'loading and unloading' is not limited to cargo." *Id.* at 434.

The *Clement* court implicitly concluded that Marathon's "loading and unloading" language had broadened the scope of the indemnity clause. This court respectfully disagrees. The specific categories listed in the second part of Chevron's indemnity clause simply repeat what is already encompassed by the first part of the clause. Indemnity for liability "arising out of or in anyway directly or indirectly connected with the performance" of the agreement is as broad as possible. Yet, Fifth Circuit precedent specifically holds that such language does not cover injury caused by a platform crane during cargo operations aboard the chartered vessel. *Lanasse* and *Smith, supra*. The second part of Chevron's indemnity clause is a redundancy that does not broaden the scope of the clause.

Accordingly, IT IS ORDERED that Chevron U.S.A., Inc.'s Motion for Partial Summary Judgment is DENIED.

New Orleans, Louisiana, this 31st day of March, 1995.

Ginger Berrigan
United States District Judge

APPENDIX B

RAYMOND GASPARD ET AL., Appellant
v.
OFFSHORE CRANE AND EQUIPMENT ET AL., Appellees

No. 94-0261

United States Court of Appeals
Fifth Circuit

February 25, 1997. ORDER

Chevron appeals dismissals granted in favor of defendant, Seacor Marine and third-party defendant Anglo-American Insurance. In order to resolve Chevron's appeals, we must scrutinize the meanings of two troublesome phrases in maritime contracts. First, we hold that the inclusion of the words "loading or unloading" in the indemnification agreement between Chevron and Seacor requires Seacor to indemnify Chevron for damage caused by a platform crane that malfunctioned during unloading. Second, we conclude that the "causal operational relation" test does not apply when the parties to a protection and indemnity insurance policy omit the words "as owner"; the omission in this case means that Anglo-American Insurance Company was not entitled to summary judgment on Chevron's third-party claim that the policy covers vessel-related liability that is based on Chevron's negligence as a platform operator.

I.

Raymond Gaspard worked for Nabors Drilling Company as a roustabout. In September of 1993, he was performing drilling services on a Chevron oil platform in the Gulf of Mexico. As part of his duties, he boarded the M/V Long Island, a cargo vessel tied up next to the platform, to help unload drill pipe. He was to rig a sling from the arm of a crane located on the platform. While Mr. Gaspard was on the deck of the Long Island, the crane malfunctioned, its

fastline broke, and the headache ball fell on him. He lost both of his legs in the accident.

Chevron had leased the Long Island from Seacor Marine. The blanket time charter agreement between Chevron and Seacor contained an indemnification provision that protected Chevron against

> all liabilities. . . for personal injury or death. . . arising out of or in any way directly or indirectly connected with the performance of service under this agreement or the . . . carrying of cargo [or] loading or unloading of passengers. . ., and whether or not caused or contributed to by the negligence, strict liability or fault of Charterer. . . .

The contract also required Seacor to purchase protection and indemnity insurance and to name Chevron as an additional insured. Ordinarily, such policies limit the lessor's coverage to damages incurred "as owner of the vessel." According to the contract, however, the policy purchased by Seacor would omit such language. Seacor purchased the required policy from Anglo-American Insurance Company. According to the policy, "[t]he so-called Other than Owner, as Owner and/or Other Insurance Clauses contained in this Policy shall be deemed deleted as may be required by contract." Anglo-American agreed to cover personal injuries, "[h]owever caused and occurring during the period of this Policy, arising out of, or having relation to the Assured's chartering, brokering, towing, berthing, servicing, operating, maintenance and/or use of vessels (including loading and/or unloading).'

Mr. Gaspard filed suit in Louisiana state court against a variety of defendants, including Seacor and Chevron. The petition alleged that the platform crane "constitute[d] a "ruin" caused by vices in its construction, and improper design, and/or failure to repair it, all within the meaning of La.Code Civ. Art. 2322 so as to make defendant, Chevron, responsible for the loss . . ." The record shows and the parties agree that any negligence occurred in the course of operating the platform crane and did not take place onboard the Long Island. The defendants removed the case to

federal court. Chevron filed a cross-claim against Seacor for contribution, indemnity, costs, and fees. Chevron also filed a third-party complaint against Anglo-American to establish coverage under the protection and indemnity policy.

On March 31, 1995, the district court denied Chevron's motion for partial summary judgment against Seacor. The court held that the time charter agreement did not obligate Seacor to indemnify Chevron for injuries caused by a platform crane while the Long Island was being unloaded. Three weeks later, the court dismissed all claims against Seacor. On February 14, 1996, the court granted summary judgment to Anglo-American. The court's order explained that the omission of the "as owner" clause from Anglo-American's insurance policy did not extend Anglo-American's coverage to Chevron's operation of the platform crane.

In March of 1996, Mr. Gaspard settled with Chevron and the other defendants. Chevron agreed to pay Gaspard $100,000. Because they had already been dismissed, Seacor and Anglo-American did not participate in the settlement. Chevron appeals both the district court's March, 1995, ruling that the time charter agreement does not require Seacor to indemnify Chevron and also the court's February, 1996, ruling that the Anglo-American insurance policy does not cover Chevron's liability.

II.

[1] We begin by asking whether the inclusion of the words "loading or unloading" in Seacor's indemnification agreement makes Seacor liable for Mr. Gaspard's injuries. The district court's denial of Chevron's motion for partial summary judgment is subject to review *de novo*. Chevron argues simply that the indemnification provision included injuries arising out of the unloading of cargo from the Long Island, even if Chevron was negligent. We agree with Chevron that the agreement's language is broad enough and explicit enough to encompass liability for injuries such as te one sustained by Mr. Gaspard.

Seacor prevailed below by convincing the court to apply the rule that even broadly worded indemnification clauses that refer to

claims "directly or indirectly connected with the possession, management, navigation, and operation" of a vessel are insufficient to create a duty to indemnify for injuries caused by a platform crane during offloading. In *Lanasse v. Travelers Ins. Co.*, 450 F.2d 580 (5th Cir. 1971), *cert. Denied*, 406 U.S. 921, 92 S.Ct. 1779, 32 L.Ed.2d 120 (1972), we confronted remarkably similar facts and a similarly expansive indemnification agreement. A crew member aboard a utility tender was nearly crushed to death when the operator of a Chevron platform crane negligently allowed a welding machine to swing against the vessel's railing. We held that the vessel owner's promise to indemnify did not contemplate injuries caused by the negligent acts of a platform crane operator during unloading. "As board as those terms are to comprehend injuries caused by the operation of the vessel in a practical sense, they do not comprehend an occurrence in which the vessel's sole contribution is to be there as the carrier from which the cargo is being removed." *Id.* At 583. *Accord Smith v. Tenneco Oil C o.*, 803 F.2d 1386, 1388-89 (5th Cir. 1986) (holding that indemnification for any claim that "arises out of or is incident to performance" of a time charter agreement does not apply to liability for a platform crane operator's negligence in lowering a worker to the vessel's deck); *Hobbs v. Teledyne Movible Offshore, Inc.*, 632 F.2d 1238, 1241 (5th Cir. 1980).

The district court reasoned that the plain language in the indemnity agreement in this case is already broad enough to include activities such as unloading cargo; therefore, specifically adding "loading or unloading cargo" to the indemnity agreement does not add anything new. On this view, if the broadest possible provisions, such as the ones in *Lanasse*, do not apply when the negligence is due to a platform crane, then these provisions cannot apply here, in spite of their explicit reference to unloading.

Chevron encouraged the court to follow *Clement v. Marathon Oil Co.*, 724 F.Supp. 431 (E.D.La. 1989). In *Clement*, an empty personnel basket struck an engineer while it was being lowered to the deck of a chartered vessel from a platform crane. As in this case, the time-charter indemnity agreement specifically referred to "loading and unloading." The court distinguished the *Lanasse* line of cases and held that the owner of the vessel had a

duty to indemnify the charterer. *Id.* At 434. *Cf. Lavergne v. Chevron U.S.A.*, 782 F.Supp. 1163, 1171 (W.D.La. 1991) (distinguishing *Clement* because "[t]here is no reference to Chevron being indemnified against its own fault in the charter agreement, nor does indemnification extend to loading and unloading operations"), *aff'd* 980 F.2d 1444 (5th Cir. 1992) (mem.). But Chevron's invocation of *Clement* in this case failed to persuade the district court, which explained that the phrase "loading and unloading" is merely "a redundancy that does not broaden the scope of the clause."

In our view, the inclusion of "loading or unloading" worked a definite change in the scope of the indemnity arrangement. According to the district court's reasoning, it does not matter that the contract says explicitly that Chevron's negligence in unloading the vessel will trigger the indemnification clause; so long as the contract includes indemnification for liability "arising out of or in any way directly or indirectly connected with the performance" of the contract, the *Lanasse* line of cases precludes indemnification for injuries caused by a platform crane. But denying indemnity here would make it impossible for parties to a time charter contract to agree that the owner will indemnify the charterer for any liabilities caused by the owner's negligence in the course of loading or unloading the vessel.

The district court's syllogistic logic misapprehends the spirit of the rule we announced in *Lanasse*. The question there was whether the expansive language agreed upon by the vessel owner and the charterer was explicit enough to allow the conclusion that the parties meant to cover events such as a crane operator's negligence in unloading the vessel. We concludes that "the operation of the crane was not even remotely related to the operation, navigation, or management of the vessel." 450 F.2d at 583. Cognizant of the principle that courts should construe indemnification agreements narrowly, we refused to adopt "the fullest meaning which lexicography would permit." *Id.* At 583-84 (quoting *Batson-Cook Co. V. Industrial Steel Erectors*, 257 F.2d 410, 413 (5th Cir. 1958)). But the *Lanasse* court did not hold that more specific indemnification contracts must be construed to exclude damages caused by a platform crane during unloading.

Nor did it hold that damages caused by a platform crane during unloading can never be subject to indemnification when the contract mimics the language of *Lanasse* by reciting that indemnification extends to any claim "arising out of or in any way directly or indirectly connected with the performance of service under this agreement." It merely held that indemnity for injuries caused by platform cranes during unloading requires "the plainly expressed intention of the parties, manifested by language couched in unmistakable terms." *Id.* At 584.

In response to Fifth Circuit case law, Chevron went out of its way to include "loading or unloading" in the indemnification agreement. It also went out of its way to state unambiguously that Chevron's own negligence would not stand in the way of indemnification. *See Theriot v. Bay Drilling Corp.*, 783 F.2d 527, 540 (5th Cir. 1986) (holding that indemnification "'without regard to . . . the negligence of any part,' clearly and unequivocally provided Bay Drilling with indemnification for its own negligence"). The contract, then, said that if Chevron was negligent while unloading the Long Island, Seacor would have to provide indemnification. We decline the invitation to use *Lanasse*, which contained a different indemnification agreement, to frustrate the calculated reference to "unloading" in this agreement.[1]

The indemnification agreement applies only to activities that have some relation to the Long Island. According to Seacor, Chevron's negligence had nothing to do with unloading the Long Island because the defects in the platform crane were general. Seacor contends that unless Chevron acted negligently specifically during the unloading operations, the indemnification agreement does not apply. Of course, we agree that the contract does not

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[1] Chevron also argues that "loading or unloading" adds something to the more general "ownership, maintenance, management, operation," etc. language because the entire list is governed by the disjunctive "or." Both parties cite Black's Law Dictionary concerning the force of "or" as opposed to "and." The fact that elements in a list are disjunctive doe snot prevent one element from duplicating other elements in the list.

burden Seacor with liability for defects in the platform crane generally. But we disagree that the crane's failure was not "connected with the performance of service . . . [or the] loading or unloading of cargo" under the time charter agreement. Even if the platform crane malfunctioned because of long-term inattention to maintenance, the injury "arose out of" or was "directly or indirectly connected with" Chevron's use of the crane during unloading. The indemnification agreement is not limited to situations in which Chevron's negligence takes place on board the Long Island. Nor is it limited to breaches of care that could only cause harm during the platform's interaction with a cargo vessel. The fact that the crane could just as easily have caused an injury on the platform after the time charter agreement expired does not take this particular injury outside of the indemnification provision.

Vessel owners can continue to obtain the protection of *Lanasse* by making use of the broad indemnity language at issue in that case. But once a vessel owner explicitly agrees to indemnify a charterer for liabilities that arise from negligent unloading operations, it can no longer hide behind the rationale in *Lanasse* and its progeny. We approve of the *Clements* decision and hold that Seacor's agreement to indemnify Chevron embraces Chevron's liability for the negligent operation of its platform crane while unloading the Long Island. The district court erred when it denied Chevron's motion for summary judgment against Seacor.

III.

We turn now to the question of whether Anglo-American's policy covers Chevron's liability. Again, we review *de novo* the district court's grant of summary judgment in favor of Anglo-American. Our case law has elucidated the meaning of an "as owner" clause in insurance policies that cover charterers' liability. Based on that case law, we hold that the omission of the "as owner" clause creates at least a genuine issue of material fact as to whether Anglo-American extended coverage to Chevron's actions as a platform operator. Because the policy could be construed to cover liability that arises from the negligent operation of the platform crane, we reverse Anglo-American's summary judgment.

[2] Once again, *Lanasse* is the seminal case. We concluded in *Lanasse* that Chevron caused the injury as a platform operator rather than as an "owner" of the chartered tender. The protection and indemnity policy, however, covered Chevron only for liabilities incurred "as owner" of the tender. Consequently, we affirmed the district court's judgment in favor of the insurer. We held specifically that a policy that covers a charterer's liability incurred "as owner" of the chartered vessel does not provide coverage unless there is "some causal operational relation between the vessel and the resulting injury." 450 F.2d at 584. "[W]here injury is done through nonvessel operations, the vessel must be more than the inert locale of the injury." *Id. Accord Randall v. Chevron U.S.A.*, 13 F.3d 888, 907-09 (5th Cir.), *modified on other grounds*, 22 F.3d 568 (5th Cir.), *cert. dismissed*, 512 U.S. 1265, 115 S.Ct. 5, 129 L.Ed.2d 906, *cert. denied*, _____U.S. _____, 115 S. Ct. 906, *cert. denied*, _____ *U.S.* _____, *115 S.Ct. 498, 130 L.Ed.2d 408 (1994); Stockstill v. Petty Ray Geophysical Div.*, 888 F.2d 1493, 1496-97 (5th Cir. 1989); *Texas Eastern Transmission Corp. V. McMoRan Offshore Exploration Co.*, 877 F.2d 1214, 1228 (5th Cir.), *cert. denied*, 493 U.S. 93, 110 S.Ct. 332, 107 L.Ed.2d 321 (1989).

[3] If the policy had retained the "as owner" language, Anglo-American would have no responsibility to provide coverage for injuries caused by Chevron's actions as a platform operator. But omitting the "as owner" language can make *Lanasse's* "causal operation relation" test inapplicable. In *Helaire v. Mobil Oil Co.*, 709 F.2d 1031, 1041-42 (5th Cir. 1983), we held that omitting the words "as owner" can expand coverage to include injuries inflicted as a platform operator rather than merely as the operator of the vessel. The plaintiff in *Helaire* was injured while attempting to unload casing onto a platform during bad weather. We affirmed the district court's holding that the relevant protection and indemnity insurance covered the platform operator because the negligence pertained to operating the chartered vessel in spite of the high seas. As an alternative holding, we pointed out that the parties had omitted the "as owner" clause from the policy, so there would be coverage even if the charterer's negligent conduct had been "as owner" of the vessel:

> Moreover, even assuming that Mobil's liability may have arisen from its status as platform operator, indemnification was still properly awarded . . .. The words "as owner of the vessel named herein" were deleted from the policy. The district court found that this deletion was intended to provide coverage for Mobile regardless of the capacity in which Mobil was sued. Certainly this finding was not clearly erroneous. . .. Consequently, the court's indemnification order is proper regardless of whether Mobile incurred liability as a "vessel owner" or as a "platform operator."

709 F.2d at 1042 (footnote omitted). *See also Randall*, 13 F.3d at 908 ("[W]e also noted [in *Helaire*] that the words 'as owner of the vessel' had been deleted from the policy, so the time charterer was entitled to coverage regardless of the capacity in which it was sued.").

Anglo-American's primary response to the *Helaire* opinion is simply to assert that its alternative holding is *dicta*. But we are bound by *Helaire's* second rationale just as firmly as if it were the only reason offered by the *Helaire* court. *See Oncale v. Sundowner Offshore Services, Inc.*, 83 F.3d 118, 120 (5th Cir. 1996), *petition for cert. Filed*, 65 U.S.L.W. 3432 (U.S. Dec. 16, 1996) (No. 96-568). In contrast to the procedural posture of *Helaire*, we do not have the benefit of a fact-finder's determination that the parties intended for the deletion to extend coverage to Chevron's vessel-related liabilities incurred as platform owner. But *Helaire* at least demonstrates that our law is consistent with Chevron's argument that we should construe the policy to cover Mr. Gaspard's injury. Its very existence means that there is at least a genuine issue of material fact as to whether Chevron's interpretation is accurate.[2]

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[2] If the contract is unambiguous, no question of fact remains, and Chevron is entitled to summary judgment on remand. *Employers Ins. Of Wausau v. Occidental Petroleum*, 978 F.2d 1422, 1430 (5th Cir. 1992), *cert. denied*, 510 U.S. 813, 114 S.Ct. 61, 126 L.Ed.2d 30 (1993). Because the district court did not have occasion

Anglo-American also argues that *Helaire* conflicts with *McMoRan*. But *McMoRan* concerned an indemnity provision in which the vessel owner agreed that "[a]ny language in the policies. . . which limits the coverage afforded to an assured who is not a shipowner or who is not entitled to the rights of limitation to which a shipowner is entitled shall be deleted." 877 F.2d at 1226. The *McMoRan* decision, then, dealt with a charterer who wanted to make sure merely that its coverage would be no less than what it would have been if it were the owner of the vessel. By contract, Chevron in this case wanted to make sure that its coverage would not be limited to what it would have been if it were actually the owner of the vessel. *Randall* discussed both *Helaire* and *McMoRan* and found no conflict between them. See 13 F.3d at 908, 908-09.

The district court recognized that Anglo-American's policy would ordinarily be governed by *Helaire* rather than by the *Lanasse* line of cases. Its summary judgment in favor of Anglo-American was based on the policy's declaration that "if claim is made by anyone other than the owner and/or operator of the vessel(s) insured hereunder, such person or entity shall not be entitled to a broader scope of coverage than would the owner and/or operator had claim been made by the owners and/or operator as an Assured hereunder." The district judge analyzed this sentence to mean that "[i]f Chevron makes a claim as owner of the platform, as opposed to as owner/operator of the vessel, the clause still limits the scope of coverage to that otherwise available under the policy. The policy provides coverage for an accident arising from the use of one of Seacor's vessels." In other words, the court understood this sentence to accomplish the same thing that the "as owner" clause would have accomplished had it been included in the policy.

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to rule on the question of the contract's ambiguity, we do not reach it. The *Helaire* Court, considering the effect of the deletion of an "as owner" clause as a matter of first impression, apparently concluded that the resulting policy retained ambiguities that required a factual inquiry into the parties' intentions. We leave it to the district court to decide whether this policy is similarly ambiguous.

We disagree with the district court's reading of the policy. The sentence it relied on applies only if a party other than Seacor or Chevron, the owner and operator of the vessel respectively, were to bring a claim. In that event, coverage is limited to what Seacor or Chevron could have obtained under the policy. The language cited by the district court has no application to this litigation.

The *Lanasse* court's reasoning turned on the "as owner" clause in the policy involved in that case. As *Helaire* demonstrates, *Lanasse's* "causal operational relation" test does not necessarily apply when the parties omit this clause from a protection and indemnity policy. When Chevron went out of its way to omit the clause, and when Anglo-American consented to including Chevron as an additional assured without limiting coverage to Chevron's liabilities sustained "as owner" of the Long Island, the parties crated a protection and indemnity policy that could be interpreted to extend coverage to Chevron's vessel-related negligence committed as platform operator.

IV.

We hold that the indemnification agreement required Seacor to indemnify Chevron for its liability to Mr. Gaspard. Consequently, the district court erred when it denied Chevron's motion for summary judgment against Seacor. On remand, the district court must calculate the damages Seacor owes to Chevron.

The district court erred when it granted summary judgment in favor of Anglo-American. The deletion of the "as owner" clause created at least a genuine issue of material fact as to whether Anglo-American's policy covered vessel-related liabilities involving Chevron's negligence in its capacity as a platform operator. Because of the procedural posture of the case, the district court sill has the task of deciding in the light of our opinion whether Chevron should prevail in its third-party claim against Anglo-American.

(2)

Supreme Court, U.S.
FILED
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No. 97-702

In The

Supreme Court of the United States

October Term, 1997

SEACOR MARINE, INC.,

Petitioner,

versus

CHEVRON U.S.A. INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

The Petition accurately lists the parties to the proceeding.

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STATEMENT OF THE CASE

Petitioner herein seeks discretionary review by this Court of the decision of the United States Court of Appeals, Fifth Circuit, reversing the district court's denial of the Motion for Summary Judgment filed by respondent. The Fifth Circuit reversed the district court and held that petitioner, Seacor Marine, Inc. ("Seacor"), owes contractual indemnity to respondent, Chevron U.S.A. Inc. ("Chevron"), pursuant to the terms of a vessel charter agreement. Respondent, Chevron, submits that for the reasons set forth herein, this Court should deny petitioner's writ application.

A Statement of Facts

On or about September 24, 1993, plaintiff, Raymond Gaspard, was employed by Nabors Drilling U.S.A., Inc. ("Nabors") as a roustabout. Nabors was performing drilling services on Chevron's Platform B in Main Pass, Block 299, which is located off the coast of Louisiana in the Gulf of Mexico.

Chevron had entered into a Blanket Time Charter with Seacor, which charter was in full force and effect on September 24, 1993. On that date, and pursuant to the charter, Seacor's vessel, the M/V LONG ISLAND, was used to transport cargo to the platform and was located next to the platform for off-loading of the cargo.

Mr. Gaspard was sent from the platform to the vessel in order to rig a sling from the main hoist of the crane, which was located on the platform, to the drill collars on the vessel for off-loading. The crane was owned and

operated by Nabors. While Mr. Gaspard was aboard the vessel, the auxiliary or fastline of the crane was somehow activated, pulling the line and headache ball assembly over the sheave, and parting the line. The headache ball fell onto the deck of the vessel, severing Mr. Gaspard's legs.

The Blanket Time Charter between Chevron and Seacor provided, in pertinent part:

> INDEMNITIES: Notwithstanding anything elsewhere contained in this charter, Owner [Seacor] hereby agrees to fully indemnify and hold Charterer [Chevron] and Charterer's co-venturers, co-operators and partners forever harmless, and to undertake to defend Charterer and Charterer's co-venturers, co-operators and partners, of and from any and all liabilities, losses, damages and costs, of whatsoever nature or kind, for personal injury or death, or for damage to the property of third parties, or for damage to Charterer's and Charterer's co-venturers, co-operators and partners' property, arising out of or in any way directly or indirectly connected with the performance of service under this agreement or the ownership, maintenance, management, operation, transportation of passengers, carrying of cargo, loading or unloading of cargo, loading or unloading of passengers or navigation of the vessel, and whether or not caused or contributed by the negligence, strict liability or fault of the Charterer or Charterer's co-venturers, co-operators and partners, or of any person or party for those acts Charterer and Charterer's co-venturers, co-operators and partners is or may be liable. Owner's liability under this section shall be limited to the greater of

$5,000,000.00 or the amount of insurance required to be carried pursuant to the terms and provisions of the blanket time charter.

B Procedural History

On December 16, 1993, Raymond Gaspard and his wife, Hazel Gaspard, filed this litigation against Offshore Crane and Equipment, Inc., a unit of Amclyde Engineering Products, Inc.; Unit Crane, Inc.; Amclyde Engineering Products, Inc.; Vickers, Inc.; Weatherford U.S., Inc.; Seacor and Chevron. The original and supplemental petitions asserted that Mr. Gaspard was injured while on the LONG ISLAND, the vessel owned by Seacor. The petitions also alleged that Chevron was liable to plaintiffs as the owner, operator and custodian of Platform B.

The case was subsequently removed to the United States District Court for the Eastern District of Louisiana. Chevron answered the plaintiffs' petitions, and filed a cross claim against Seacor and a third party demand against Anglo-American Insurance Company ("Anglo-American"). Chevron's cross claim sought contribution and indemnity, both tort and contractual, from Seacor, as well as costs and attorney's fees expended by Chevron in the defense of this claim. Additionally, Chevron asserted that Seacor was required to obtain insurance, naming Chevron as an additional insured to protect Chevron against claims such as those asserted by the Gaspards. The third party demand of Chevron against Anglo-American alleged that Chevron was covered as an additional assured for its alleged liability to Raymond Gaspard under an insurance policy issued by Anglo-American to Seacor.

Chevron filed a Motion for Partial Summary Judgment seeking indemnity and a defense to plaintiffs' allegations pursuant to the Blanket Time Charter in effect between Seacor and Chevron. By Order dated March 31, 1995, the district court denied this Motion for Summary Judgment, holding that Seacor did not owe indemnity to Chevron. A copy of the district court's Order and Reasons is contained in the Appendix of Seacor's Petition for Writ of Certiorari, marked Appendix A.

On April 20, 1995, the district court granted Seacor's Motion to Dismiss, which disposed of plaintiffs' claims against Seacor.

On January 11, 1996, Anglo-American filed a Motion for Summary Judgment, alleging that it did not owe a defense or indemnity to Chevron. By Order dated February 14, 1996, the district court granted Anglo-American's Motion for Summary Judgment, dismissing Chevron's third party demand.

In March 1996, plaintiffs settled their claims against all remaining defendants, including Chevron. Neither Seacor nor Anglo-American participated in that settlement. In that settlement, Chevron reserved its rights against Seacor and Anglo-American. Once settlement was reached, Chevron timely filed its Notice of Appeal, appealing both the district court's denial of Chevron's Motion for Partial Summary Judgment and the district court's granting of Anglo-American's Motion for Summary Judgment.

In a decision published at 106 F.3d 1232, the United States Court of Appeals for the Fifth Circuit reversed the district court. The Fifth Circuit held that the blanket time

charter required Seacor to indemnify Chevron, and remanded the case to the district court for a calculation of the amount of damages owed by Seacor to Chevron. The Fifth Circuit further held that a genuine issue of material fact existed as to whether Anglo-American's policy covered vessel-related liabilities involving Chevron's negligence in its capacity as platform owner, and remanded that issue for a determination by the district court of whether Chevron should prevail in its third party claim against Anglo-American.

Seacor now seeks a Writ of Certiorari from this Court for a review of the Fifth Circuit's holding that Seacor owes indemnity to Chevron.

REASONS FOR DENYING THE WRIT

In its Petition for Writ of Certiorari, Seacor alleges that "[t]he Fifth Circuit's opinion exemplifies recurring confusion among the courts, which have failed to consistently recognize that liability 'arises out of' an activity only if the acts or omissions giving rise to the liability occurred in the conduct of that activity. Review by this Court would clarify the meaning of this common term of indemnity contracts and would lend predictability to the interpretation of innumerable contracts in maritime industries and elsewhere." Seacor's Petition for Writ of Certiorari pages 4-5. Seacor's contentions, however, are without merit. Contrary to Seacor's claims, the Fifth Circuit's opinion clarifies its previous decisions in this area by specifying the contractual language that will trigger indemnity obligations for injuries caused by a platform

crane, thereby providing guidance to future contracting parties considering the language necessary to effect indemnity in these situations. Further, the Fifth Circuit appropriately found a causal connection necessary to give rise to indemnity under the contractual "arises out of" language.

The contractual language relied upon by the Fifth Circuit in finding that Seacor owed Chevron indemnity reads as follows:

> [Seacor] hereby agrees to fully indemnify . . . [Chevron] . . . of and from any and all liabilities, losses, damages, and costs . . . for personal injury and death- . . . arising out of or in any way directly or indirectly connected with the performance of service under this agreement or the ownership, maintenance, management, operation, transportation of passengers, carrying of cargo, *loading or unloading of cargo,* loading or unloading of passengers or navigation of the vessel . . . (Emphasis added).

Considering whether this language is sufficient to trigger indemnity obligations in favor of Chevron for the claims brought by Mr. Gaspard, the Fifth Circuit began its analysis by recognizing its previous decisions that held that "even broadly worded indemnification clauses that refer to claims 'directly or indirectly connected with the possession, management, navigation, and operation' of a vessel are insufficient to create a duty to indemnify for injuries caused by a platform crane during unloading." *Gaspard v. Offshore Crane and Equipment, Inc.*, 106 F.3d 1232, 1235 (5th Cir. 1997). The Fifth Circuit noted that in *Lanasse v. Travelers Insurance Company*, 450 F.2d 580 (5th

Cir. 1971), *cert. denied*, 406 U.S. 921, 92 S.Ct. 1779, 32 L.Ed.2d 120 (1972), it was confronted with remarkably similar facts and with a broadly worded indemnification clause. In that case, a crewmember aboard a utility tender was almost crushed to death when the operator of a Chevron platform crane allowed a welding machine to swing against the vessel's railing. The indemnity clause in *Lanasse* stated that indemnity would be provided to Chevron by the vessel owner for liability "arising in any way directly or indirectly connected with the possession, navigation, management and operation of the vessel." *Lanasse*, 450 F.2d at 582. The Fifth Circuit held that this broadly worded indemnity clause did not contemplate injuries caused by the negligent acts of a platform crane operator during unloading. The *Gaspard* court further recognized that in the Fifth Circuit's decisions following *Lanasse*, it held that broadly worded contractual indemnification language providing indemnity for any claim that "arises out of or is incident to performance" of a time charter agreement does not apply to liability for a platform crane operator's negligence during loading or unloading operations. *Gaspard*, 106 F.3d at 1235 (citing *Smith v. Tenneco Oil Company*, 803 F.2d 1386 (5th Cir. 1986) and *Hobbs v. Teledyne Movible Offshore, Inc.*, 632 F.2d 1238 (5th Cir. 1980)).

However, the Fifth Circuit correctly noted that in this case, the contractual indemnity language is distinguishable from the language considered by *Lanasse* and its progeny. Specifically, the Fifth Circuit was confronted with the issue of whether the inclusion of the words "loading or unloading" in Seacor's indemnification agreement made Seacor liable for Mr. Gaspard's injuries.

The district court had reasoned that the language in the indenmity agreement at issue was already broad enough to include activities such as unloading cargo, so that adding "loading or unloading cargo" did not add anything new to the broad introductory language. Using this logic, the district court held that if the broadest possible terms, such as the one at issue in *Lanasse*, do not apply to trigger indemnity under a time charter when injuries are due to a platform crane, then indemnity cannot be had under the Seacor-Chevron time charter, in spite of its explicit reference to unloading.

In reversing the district court, the Fifth Circuit correctly stated that "the inclusion of 'loading or unloading' worked a definite change in the scope of the indemnity arrangement" and distinguished the arrangement from those found in *Lanasse* and its progeny. *Gaspard*, 106 F.3d at 1235. To hold otherwise would always preclude indemnification for injuries caused by a platform crane just because the contract included indemnification for liability "arising out of or in any way directly or indirectly connected with the performance" of the contract, regardless of whether the contract explicitly states that negligence in unloading the vessel will trigger the indemnification clause. *Id.* This illogical result was never the intent of *Lanasse*. As stated by the Fifth Circuit, "the *Lanasse* court did not hold that more specific indemnification contracts must be construed to exclude damages caused by a platform crane during unloading. Nor did it hold that damages caused by a platform crane during unloading can never be subject to indemnification when the contract mimics the language in *Lanasse* by reciting that indemnification extends to any claim 'arising out of or in any way directly or indirectly connected with the performance of

service under this agreement.' It merely held that indemnity for injuries caused by platform cranes during unloading requires 'the plainly expressed intention of the parties, manifested by language couched in unmistakable terms.' " *Gaspard*, 106 F.3d at 1236. Finding that the inclusion of the language "loading or unloading" in the indemnification agreement plainly expressed the intention of the parties to provide indemnity for personal injuries received during unloading operations, the Fifth Circuit correctly held that Seacor owed indemnity to Chevron for Mr. Gaspard's claims.

Contrary to Seacor's assertions, then, the Fifth Circuit's holding in this case is not in conflict with its previous precedents. Rather, the decision clarifies these precedents and provides clear guidance on the language necessary to trigger indemnification for injuries caused by a platform crane. In fact, it was in response to *Lanasse* and its progeny that Chevron went out of its way to include "loading or unloading" in the indemnification agreement, and also went out of its way to state that Chevron's own negligence would not stand in the way of indemnification. The result is a contract that unambiguously states that if personal injuries occur during the unloading of the LONG ISLAND, which would necessarily involve the platform's crane, Seacor would owe indemnification to Chevron. In arguing that *Lanasse* should always nullify clear agreements to provide indemnity for injuries cause by a platform crane, Seacor misinterprets Fifth Circuit caselaw on this issue in an attempt to avoid its obligations contained in a contract it freely executed. As the Fifth Circuit correctly noted, "once a vessel owner explicitly agrees to indemnify a charterer

for liabilities that arise from negligent unloading operations, it can no longer hide behind the rationale in *Lanasse* and its progeny." *Gaspard,* 106 F.3d at 1236.

Further, Seacor is incorrect in arguing that the Fifth Circuit misapplied the "arises out of" language of the contract and failed to find a "causal operational relationship" necessary to trigger the indemnification clause, and instead "allowed the vessel's mere fortuitous engagement in a cargo offloading operation at the locale of the accident to trigger the obligation to indemnify." Seacor's Petition for Writ of Certiorari, page 10. As the Fifth Circuit noted, when Mr. Gaspard's accident occurred, the crane that allegedly failed was being used in unloading operations as it was unloading cargo from the LONG ISLAND. *Gaspard,* 106 F.3d at 1234. The charter agreement provided that Seacor would indemnify Chevron for "personal injury and death . . . arising out of or in any way directly or indirectly connected with . . . loading or unloading of cargo. . . . " Accordingly, the Fifth Circuit correctly found that a causal operational relationship existed because the injury arose out of or was directly or indirectly connected with Chevron's use of the crane during unloading operations. The operation that was underway (unloading cargo) necessarily involved the participation of the vessel, and because it was specifically provided for in the contract, the injuries that were caused or occurred during that operation satisfied the requisite "causal operational relationship" so as to trigger Seacor's indemnity obligations. Clearly then, the given liability is sufficiently related to the activities specified in the indemnity clause to have "arisen out of" those activities.

To argue otherwise is to ignore the facts of this case and the clear language of the indemnity agreement.

CONCLUSION

For the foregoing reasons, review by this Court is not necessary or appropriate and the writ for certiorari should not issue.

Respectfully submitted,

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